IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1974

No. 75-23

Supreme Court, U. S.
FILED
JUN 11 1975
MICHAEL RODAK, JR., CLERK

VERTIS HIGGINS,

Petitioner

versus

VILLAGE OF JEAN LAFITTE, HONORABLE EDWIN W. EDWARDS, GOVERNOR OF THE STATE OF LOUISIANA, LEO E. KERNER, JR., QUINTEN S. COUEVAS, ALVRO DESPAUX, FREDERICK J. GROS, BRUNO TOUCHARD, HUEY L. BELSOME, IRVIN RAWLS, JR., CLARENCE DUFRENE, AND THE PARISH OF JEFFERSON

CONSOLIDATED WITH

FLEMING PLANTATIONS,

Petitioner

versus

VILLAGE OF JEAN LAFITTE, HONORABLE EDWIN W. EDWARDS, GOVERNOR OF THE STATE OF LOUISIANA, LEO E. KERNER, JR., QUINTEN S. COUEVAS, ALVRO DESPAUX, FREDERICK J. GROS, BRUNO TOUCHARD, HUEY L. BELSOME, IRVIN RAWLS, JR., CLARENCE DUFRENE, AND THE PARISH OF JEFFERSON

PETITION FOR A WRIT OF CERTIORARI
FROM THE SUPREME COURT
OF THE STATE OF LOUISIANA

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PETITION FOR A WRIT OF CERTIORARI FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

The petitions of Vertis Higgins and Fleming Plantations pray that a writ of certiorari issue to review the opinion of the Fourth Circuit Court of Appeal of the State of Louisiana and a denial of a petition for writ of certiorari and review of the Supreme Court of Louisiana.

OPINIONS BELOW

The opinion of the Fourth Circuit Court of Appeal is reported in 306 So. 2d 79 (1975). The denial of the Supreme Court of Louisiana of the writ of certiorari and review is reported in 309 So. 2d 347 (1975). The opinion of the Fourth Circuit Court of Appeal of the State of Louisiana is adverse to the interest of Petitioners as is the Supreme Court's denial of the petition for review. The Court of Appeal decision appears herein as Appendix A, infra, pp. A-1-2, A-4-10, and the denial of a writ of review by the Supreme Court of Louisiana appears herein as Appendix B, infra, pp. B-1.

JURISDICTION

The denial of the writ of certiorari and review by the Supreme Court of the State of Louisiana was entered on March 14, 1975, and became final on that day. This petition for certiorari was filed within ninety days from the date of aforesaid. The jurisdiction of this Court is invoked under 28 USCA 1257 (3).

QUESTIONS PRESENTED

Both Petitioners sued to nullify a proclamation by Honorable Edwin W. Edwards, Governor of the State of Louisiana, proclaiming a municipality entitled "Village of Jean Lafitte."

There is only one ground or question which deserves the attention of this honorable Court. This question has to do with the constitutionality of the statute (L.S.A. R.S. 33:52) under which the "village" was incorporated and the question thereby arising requires an interpretation of the following:

1. Is it constitutional to delegate legislative authority either to an arbitrary class or number of people or to the judiciary or to a combination of both? The language of the statute is annexed for Your Honors' consideration; however, that part of the language which seems pertinent to this question is quoted below:

> "Whenever 25% of the electors residing in an unincorporated settlement owning 25% in value of the property composing it shall sign and present to the Governor a petition setting forth the metes and bounds of the unincorporated settlement, stating the number of inhabitants residing therein, and praying incorporation, he shall inquire into the facts involved....If the Governor finds that there has been full compliance with these requirements and that the proposed municipality contains at least 150 inhabitants, he shall, by proclamation, define the limits and boundaries, fix the name, and declare the municipality incorporated effective 30 days subsequent to the date upon which he issues the proclamation. Any interested citizen residing in the municipality or any owner of property located therein may, within the 30 day period before the proclamation becomes effective, file suit in the district court having jurisdiction over the municipality to contest the proposed incorporation and the question shall be whether it is reasonable and if there has been full compliance with the statutory requirements."

It has always been the position of Petitioners that any statute which delegates legislative authority to only 25 percent of the electors necessarily delegates to an arbitrarily small class of people the authority to create municipalities. According to the language of the statute, 75 percent of the same class of people, i.e., electors residing in an unincorporated area, could actively oppose the creation of a municipality but to no avail since the 25 percent category creates a directive to the Governor of the State of Louisiana to issue a proclamation without any consideration for the wishes of the remaining 75 percent

of the people affected. It is clear under Louisiana law that the actions of the Governor are purely administrative and are solely limited to determining whether there has been full compliance with the statutory requirements and nothing more. See *State v. Aicklin*, 167 La. 456, 119 So. 425 (1928).

The creation of municipalities has always been a legislative function and when the Legislature properly asserts its wishes in this connection then the people cannot complain despite the fact that taxes invariably increase and the public services received by the people are frequently either worse or at best duplicated. See *Hunter v. City of Pittsburgh*, 207 U.S. 161, 28 S. Ct. 40, 52 L. Ed. 151.

In circumstances where there has been an improper delegation of this particular legislative prerogative, or for that matter any legislative prerogative, certain important State and Federal constitutional questions become immediately apparent. The Fifth and Fourteenth Amendments to the Constitution guarantee citizens due process of law and equal protection of the laws, and it is respectfully submitted that whenever a State legislature permits 25 percent of any category to control the destiny of 75 percent of the same category, these constitutional questions come into play and are clearly violated.

STATEMENT OF FACTS

Certain citizens in an unincorporated area of Jefferson Parish, Louisiana, located in that part of the Parish where Jean Lafitte the pirate is alleged to have maintained his hideaway, determined to incorporate as a village. Pursuant to that determination, petitions were distributed and signed throughout the unincorporated area, and other activities such as publication of the petitions together with the other requirements of the statute were pursued. In due course the petition was presented to Honorable Edwin Edwards, Governor of the State of Louisiana, and

bound by his administrative duty under the statute to determine only that "there has been full compliance with these requirements," a proclamation was issued recognizing the area as a village.

The statute permits any interested dissenting party to object in District Court to the incorporation on the ground that the concept is unreasonable. Both Petitioners complained about the incorporation in this manner and included a complaint that the statute violated the Louisiana and United States Constitutions.

The matter was litigated in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana, and the judgment of that court was in favor of validating the village. The case was then appealed to the Fourth Circuit Court of Appeal of the State of Louisiana, where again the decision was in favor of validating the village. At this point the possible unconstitutionality of the act was given close and considerable attention by the court, and despite the fact that the court ruled in favor of constitutionality, one cannot read the decision or the Per Curiam on application for rehearing (Appendix D, infra, pp. D-1-3) without realizing that the court was straining legal principles to the extreme in order to hold for constitutionality.

For example, one finds the following language at page 5 of the Fourth Circuit Court of Appeal opinion (Appendix A):

> "Coincidently, it is with respect to the very issue which is corrected by the 1974 amendment that we have the greatest difficulty finding in favor of constitutionality...."
> (Page 5, Fourth Circuit opinion)

> "In this instance, the legislature has, through L.S.A. R.S. 33:52, delegated the actual power to incorporate the Village of Jean Lafitte to twenty-five percent of the voters within the geographical confines of the proposed village.

> Whether this substantially less than majority percentage constitutes an unreasonable delegation of authority has caused us much concern.''
> (Pages 5-6, Fourth Circuit opinion)

Again in denying Petitioners' application for a rehearing which represented a direct attack upon the position of the Fourth Circuit Court of Appeal, the first sentence of the Court's refusal to rehear the matter produced the following language:

> ''Appellants' application for rehearing is a provocative pleading.'' (Appendix D)

What has happened in this particular instance is that the Fourth Circuit Court of Appeal correctly concluded that twenty-five percent of the residents of a village would be an improper delegation of legislative authority but then determined that the act was rescued by the fact that the legislature also designated to the judiciary the right of judicial review of the ''reasonableness'' of the proposal before the incorporation can, in fact, take place. Page two of the denial of the rehearing by the Fourth Circuit Court of Appeal makes that very clear.

It is Petitioners' position, however, that the Fourth Circuit Court of Appeal has simply taken the erroneous position that two improper delegations of legislative authority added together equals one proper delegation of legislative authority.

The Louisiana Supreme Court unfortunately refused to accept a petition for review. Accordingly, the language of the Fourth Circuit Court of Appeal in its decision of December 10, 1974, and in the Per Curiam on application for rehearing decided on January 14, 1975, represent the last judicial expressions containing language which might provide some insight in presenting this issue before this honorable Court.

REASONS FOR GRANTING THE WRIT

There are few constitutional principles in this country rivaling the validity of the separation of powers between the three branches of Government. This is true both on the State and Federal level. Perhaps the most important principle protecting effective democratic government since our United States Constitution was instituted is the fact that the executive, legislative and judicial branches of government are required to be separate entities and are not subservient the one to the others.

As a matter of practical necessity, each of these branches of government frequently delegates its authority to others, sometimes to administrative agencies, sometimes to groups or individuals, but the fundamental principle zealously protected is that none of these branches of government can arbitrarily abrogate its own authority to either of the other branches of government or to cause its own work to be done or decisions to be made by improperly constituted third parties.

The essence of petitioners complaint is that that is precisely the principle which has been violated in this case. Our government cannot and has never been run on the principle that 25 percent of any group or class can represent the controlling interest over the 75 percent of the same group or class. Unfortunately, the statute complained about herein has this unhappy characteristic and needs to be declared unconstitutional. The Louisiana Constitution is very clear on this requirement that the powers of government must be separated.

The Louisiana Constitutional provisions are Article 2, Section 1, and Article 2, Section 2. The articles require that the governing powers of the State of Louisiana be divided into the usual three distinct departments: legislative, executive and judicial, and expressly prohibits

any one of these departments from encroaching on the other.

Article 2, Section 2, reads in part as follows: "No one of these departments, nor any person or collection of persons holding office in one of them, shall exercise power properly belonging to either of the others...."

The basic structure of the United States Constitution also obviously addresses itself to establishing this separation of powers.

Under these circumstances and particularly in view of the fact that Your Honors have repeatedly protected against the dilution or corruption of voting power whether vested in the legislature or with the citizens, Petitioners respectfully hope that they have made their point and that this statute will be declared unconstitutional.

The one man - one vote principle which has emerged over the years represents a parallel concept to the one which Petitioners suggest needs to be recognized in the instant case.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment of the Fourth Circuit Court of Appeal of the State of Louisiana and the refusal of the Supreme Court of the State of Louisiana to review that judgment.

Respectfully submitted,

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CERTIFICATE

I, Harry A. Burglass, attorney for Vertis Higgins and Fleming Plantations, appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 3rd day of July, 1975, I served copies of the foregoing Petition for Writ of Certiorari to the Supreme Court of the United States on the several parties thereto, as follows:

1. On the Village of Jean Lafitte, Leo E. Kerner, Jr., Quinten S. Couevas, Alvro Despaux, Frederick J. Gros, Bruno Touchard, Huey L. Belsome, Irvin Rawls, Jr., and Clarence Dufrene, by mailing a copy thereof to the office of their attorneys John J. Hainkel, Jr., and James L. Donovan, postage prepaid, at 704 Carondelet Street, New Orleans, Louisiana 70130.

2. On the Parish of Jefferson by mailing a copy of the same, postage prepaid, to the Parish Attorney's Office, P.O. Box 9, Gretna, Louisiana 70053.

3. On the Honorable Edwin W. Edwards, Governor of the State of Louisiana, by mailing a copy of the same to the Attorney General's Office, postage prepaid, at 2-3-4 Loyola Building, New Orleans, Louisiana 70112.

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VERTIS HIGGINS

V.

VILLAGE OF JEAN LAFITTE, HONORABLE EDWIN W. EDWARDS, GOVERNOR OF THE STATE OF LOUISIANA, LEO E. KERNER, JR., QUINTEN S. COUEVAS, ALVRO DESPAUX, FREDERICK J. GROS, BRUNO TOUCHARD, HUEY L. BELSOME, IRVIN RAWLS, JR., CLARENCE DUFRENE AND THE PARISH OF JEFFERSON.

NO. 6476
COURT OF APPEAL
FOURTH CIRCUIT
STATE OF LOUISIANA

CONSOLIDATED WITH
NO. 6477

FLEMING PLANTATIONS

V.

VILLAGE OF JEAN LAFITTE, HONORABLE EDWIN W. EDWARDS, GOVERNOR OF THE STATE OF LOUISIANA, LEO E. KERNER, JR., QUINTEN S. COUEVAS, ALVRO DESPAUX, FREDERICK J. GROS, BRUNO TOUCHARD, HUEY L. BELSOME, IRVIN RAWLS, JR., CLARENCE DUFRENE, AND THE PARISH OF JEFFERSON.

APPEAL FROM THE TWENTY FOURTH JUDICIAL DISTRICT COURT IN AND FOR THE PARISH OF JEFFERSON, STATE OF LOUISIANA, HONORABLE FRANK V. ZACCARIA, JUDGE

PETER H. BEER
JUDGE

(COURT COMPOSED OF JUDGES JAMES C. GULOTTA, JOHN C. BOUTALL, AND PETER H. BEER)

HARRY A. BURGLASS, ESQ.

FOR PLAINTIFF-APPELLANT

ALVIN RUDY EASON, ESQ. (PARISH ATTORNEY)
JAMES O. MANNING, ESQ. (ASSISTANT PARISH ATTORNEY)

FOR DEFENDANT-APPELLEE

JOHN J. HAINKEL, JR., ESQ.
JAMES L. DONOVAN, ESQ.

FOR DEFENDANT-APPELLEE

AFFIRMED

These consolidated cases were tried in the 24th Judicial District Court on February 14th, 15th and 19th, 1974 and Judgment was rendered on March 1st, 1974. The District Judge has done an impressive job of outlining the factual and legal issues in his comprehensive Reasons for Judgment.

Plaintiff-appellants raise factual, legal and constitutional issues in their attack on the incorporation of the Village of Jean Lafitte in the trial court as well as in this appeal, apparently making their principle thrust against the constitutionality of the enabling statute L.S.A. R.S. 33:52, which reads as follows:

"Whenever 25% of the electors residing in an unincorporated settlement owning 25% in value of the property composing it shall sign and present to the governor a petition setting forth the metes and bounds of the unincorporated settlement, stating the number of inhabitants residing therein, and praying incorporation, he shall inquire into the facts involved. The petition shall have attached a certificate from the assessor of the parish wherein the settlement is located certifying as to the assessment in that parish of each of the owners signing the petition. The assessment shall be presumed to be the value of the property. Where there has been a change of ownership of property since the last assessment of it, the assessor shall certify the valuation of the present owner in accordance with the last assessment appearing on the rolls against the previous owner. In any case where the property of the present owner has not specifically been assessed, the assessor shall estimate the assessed value of the property for the current year and certify the same as the value of the property. A copy of the petition in full, including the names of the petitioners, shall have been published once each week during the period of 15 days in a newspaper having circulation in the parish wherein the settlement is located and a certified copy of the published copy together with the names of the newspaper and the dates on which the publishment was made shall be attached to the petition. If the Governor finds that there has been full compliance with these requirements and that

the proposed municipality contains at least 150 inhabitants, he shall, by proclamation, define the limits and boundaries, fix the name, and declare the municipality incorporated effective 30 days subsequent to the date upon which he issues the proclamation. Any interested citizen residing in the municipality or any owner of property located therein may, within the 30 day period before the proclamation becomes effective, file suit in the district court having jurisdiction over the municipality to contest the proposed incorporation and the question shall be whether it is reasonable and if there has been full compliance with the statutory requirements. If the incorporation is adjudged reasonable and it is found that requirements have been satisfied, the incorporation shall be effective ten days after the judgment is rendered and signed unless a suspensive appeal therefrom has been taken within the time and manner provided by law. If the proposed incorporation is adjudged to be unreasonable or if it is found that all requisites have not been fulfilled, the proclamation shall be vacated and the proposed incorporation shall be denied and a petition to the Governor to incorporate the same municipality shall not be presented within one year thereafter.

A similar right of appeal from the judgment of the district court vacating the proclamation and denying the incorporation shall be granted (to) any interested citizen or property owner in the municipality. As amended Acts 1964, No. 240, § 1."

This statute, enacted by the legislature in 1964 has, in fact, been very recently amended in the 1974 regular legislative session by Act No. 286 of 1974 which states as follows:

> "Incorporation of unincorporated settlements; vote of the electorate.
> Whenever twenty-five percent of the electors residing in an unincorporated settlement owning twenty-five percent in value of the property, less and except tax-exempt property, composing it shall sign and present to the governor a petition setting forth the metes and bounds of the unincorporated settlement, stating the number of inhabitants residing therein, and praying incorporation, he shall inquire into the facts involved. The petition shall have attached a certificate from the assessor of the parish wherein the settlement is located certifying as to the assessment in that parish of each of the owners signing the petition. The assessment shall be presumed to be the value of the property. Where there has been a change of ownership of property since the last assessment of it, the assessor shall certify the valuation of the present owner in accordance with the last assessment appearing on the rolls against the previous owner. In any case where the property of the present owner has not specifically been assessed, the assessor shall estimate the assessed value of the property for the current year and certify the same as the value of the property. A copy of the petition in full, including the names of the petitioners, shall have been published once each week during the

> period of fifteen days in a newspaper having circulation in the parish wherein the settlement is located and a certified copy of the published copy together with the names of the newspaper and the dates on which the publishment was made shall be attached to the petition. If the governor finds that there has been full compliance with these requirements and that the proposed municipality contains at least one hundred fifty inhabitants, he shall call a special election, the costs of which shall be borne by the parish governing authority, within the area to be incorporated for the purpose of determining whether or not the community shall become a municipality. All qualified electors residing within the area to be incorporated shall be entitled to vote thereon. If a majority of those voting cast their vote in favor of incorporation, then the area shall become incorporated. If the majority vote is against incorporation, then another election for said purpose may not again be called within two years.

Section 2. Section 52.1 of Title 33 of the Louisiana Revised Statutes of 1950 is hereby enacted to read as follows:

§ 52.1 Proclamation by governor; appeal

Provided there has been a majority vote of the qualified voters within the area incorporating, then the governor by proclamation shall define the limits and boundaries, fix the name, and declare the municipality incorporated effective thirty days subsequent to the date upon which he issues the proclamation. Any interested citizen residing in the municipality or any owner

of property located therein may, within the thirty-day period before the proclamation becomes effective, file suit in the district court having jurisdiction over the municipality to contest the proposed incorporation and the question shall be whether it is reasonable and if there has been full compliance with the statutory requirements. If the incorporation is adjudged reasonable and it is found that requirements have been satisfied, the incorporation shall become effective ten days after the judgment is rendered and signed unless a suspensive appeal therefrom has been taken within the time and manner provided by law. If the proposed incorporation is adjudged to be unreasonable or if it is found that all requisites have not been fulfilled, the proclamation shall be vacated and the proposed incorporation shall be denied and a petition to the governor to incorporate the same municipality shall not be presented within one year thereafter. A similar right of appeal from the judgment of the district court vacating the proclamation and denying the incorporation shall be granted to any interested citizen or property owner in the municipality.

Section 3. Notwithstanding anything contained herein to the contrary, the provisions of this Act shall not apply to any area in which the governor has signed or issued the proclamation required by laws of this state prior to the effective date of this act.

Section 4. The effective date of this act shall be midnight of December 31, 1974.

Section 5. All laws or parts of laws in conflict herewith are hereby repealed.

Approved July 12, 1974.
Effective December 31, 1974.''

Indeed, this ammendment which becomes effective December 31st, 1974 will do much to redress the possible constitutional wrongs that may have been committed at the time of the passage and promulgation of the original statute in 1964. Coincidently, it is with respect to the very issue which is corrected by the 1974 ammendment that we have the greatest difficulty finding in favor of constitutionality; even taking into account the strong presumptions of the law in favor of upholding legislative proclamations, *Ward v. Leche,* 189 La. 113, 179 So. 53 (1938), *Everhardt v. City of New Orleans,* 253 La. 285, 217 So. 2nd 400 (1968).

Traditionally, a legislative body may (and very often does) delegate its authority in appropriate areas. When it does, it must provide guidelines sufficiently clear to guarantee that the legislative will is followed, *State v. Aicklin,* 167 La. 456, 119 So. 425 (1928). Nor can such delegation be ''unreasonable'' within the generally accepted use of that often difficult to define word. In this instance, the legislature has, through L.S.A. R.S. 33:52, delegated the actual power to incorporate the Village of Jean Lafitte to twenty five percent of the voters within the geographical confines of the proposed village. Whether this substantially less than majority percentage constitutes an unreasonable delegation of authority has caused us much concern.

Compounding our dilemma is the fact - clearly shown in the record (and apparently conceeded by plaintiff-appell-

ants) - that over fifty percent of the voters within the geographical confines of the proposed village are, indeed, in favor of incorporation. Thus, the provision that is set forth in the amended statute (which goes into effect on December 31st, 1974) regarding majority vote requirements, would have been met if that now amended requirement had been in the original statute. Regardless of this, our judicial duty would require us to invalidate L.S.A. R.S. 33:52 if it was patently unconstitutional when it was applied. We think that it would have been but for the saving proviso to the effect that any interested citizen had the right to contest the proposed incorporation on two grounds:

1) Full compliance with the statutory requirements; and
2) Reasonableness.

We feel that the statutory provision which enabled the District Court to make the reasonableness inquiry saves the statute from the steep drop into unconstitutional oblivion. Otherwise, the twenty five percent proviso is clearly in due process trouble. This would not be so if the twenty five percent requirement merely set into motion a process whereby a majority of the voters affected by the incorporation would have a voice in the final mandate. Indeed, far less than twenty five percent might be constitutionally authorized to set the incorporation process in motion, but the actual incorporation should not proceed to constitutional fruition until a majority has spoken. The basic principle of our democratic process is that to become the act of the people, a proposition must be adopted by majority vote; that is, direct approval must be registered by more than half of those voicing their position on the matter. For the legislature to delegate the unqualified ability to incorporate to twenty five percent of the affected villagers simply on the proof that certain clerical requirements have been met would be an

unconstitutional deprivation of due process. Yet the additional proviso setting up a procedure for judicial review into the question of reasonableness acts, in this instance, as a constitutional life preserver.

Furthermore, the undisputed facts show that a majority of the proposed villagers favor incorporation, notwithstanding the fact that the present enabling statute requires only twenty five percent approval.

Thus, under the particular limited factual circumstances existant here, we do find that L.S.A. R.S. 33:52 is a valid and constitutional act of the Legislature of Louisiana.

In this same general area of consideration we now turn to that part of the proceeding in the Trial Court in which the esteemed Trial Judge dealt with the issue of reasonableness. In his Reasons for Judgment, the Trial Judge states that the Court "listened to as much evidence as it felt it had to hear in order to determine that there was reasonableness in the petition signed by these taxpayers" (p. 16, Reasons for Judgment). As we review the testimony and exhibits, we cannot conclude that the Trial Judge abused the wide latitude of discretion which he possesses in giving judicious consideration to the constitutional issue of reasonableness. We are indebted to him for his painstaking and articulate review of the areas of consideration upon which he ultimately based his findings. We hold that the finding of reasonableness, though open to serious questioning, was not an abuse of discretion.

Having reached the conclusions stated above on the constitutional and related issues, we turn to a consideration of the assessment tabulation issues which are material to the complete resolution of this litigation.

The assessments within the geographical definition of the proposed village were certified by the parish assessor to be $300,341.00. On that basis, according to L.S.A. R.S. 33:52, the incorporation proposal required support by owners of property with property assessment valuations of $75,085.25.

The Trial Judge increased the total assessment figure by $38,750.00 - the assessed value of property on the assessors "exempt rolls". On that basis, the total assessment figure was raised to $339,091.00 and the statutory requirement became an amount in excess of $84,772.75. Other minor adjustments were made during the trial which finally resulted in a conclusion on the part of the Trial Judge that the proper total assessment figure to be considered in applying the statutory provisions was $329,428.50; twenty five percent of which was $82,357.12.

We find no manifest error in the Trial Court's method of computation, nor in the final determination that, insofar as the assessment issue is concerned, the incorporators have fulfilled the statutory burdens existant at the time of petitioning for incorporation.

Having reached the conclusion noted above, little purpose would be served by a detailed consideration of each step in the process.

Insofar as the statutory requirements concerning publication are concerned, we accept and adopt the reasoning of the Trial Judge to the effect:

> "This Court is of the opinion that the requirement of the publication of a copy of the petition in full does not mean that the

> assessments have to be published. This is analogous to the filing of a lawsuit wherein certain documents must be attached. It is not necessary that the defendants in the law suit be served with copies of the attached documents. It suffices that they are made of public record so that interested parties can examine them. I take this to be the meaning and spirit of R.S. 33:52."

The Judgment of the District court is affirmed; costs of this appeal to be paid jointly by appellants in the consolidated cases.

VERTIS HIGGINS March 14, 1975

V.

NO. 55,889

VILLAGE OF JEAN LAFITTE, HON. EDWIN W. EDWARD, GOVERNOR OF THE STATE OF LOUISIANA., LEO E. KERNER, JR., QUINTEN S. COUEVAS, ALVRO DESPAUX, FREDERICK J. GROS, BRUNO TOUCHARD, HUEY L. BELSOME, IRVIN RAWLS, JR., CLARENCE DUFRENE AND THE PARISH OF JEFFERSON

CONSOLIDATED WITH

No. 6477 - FLEMING PLANTATIONS

V.

VILLAGE OF JEAN LAFITTE, HON. EDWIN W. EDWARDS, GOVERNOR OF THE STATE OF LA., LEO E. KERNER, JR., QUINTEN S. COUEVAS, ALVRO DESPAUX, FREDERICK J. GROS, BRUNO TOUCHARD HUEY L. BELSOME, IRVIN RAWLS, JR., CLARENCE DUFRENE, AND THE PARISH OF JEFFERSON.

In re: Vertis Higgins and Fleming Plantations, applying for Certiorari, or writ of review, to the Court of Appeal, Fourth Circuit, Parish of Jefferson.

Writ denied. the result is correct.

/s/ MEB

/s/ JWS

/s/ FWS

/s/ JAD

/s/ PFC

/s/ WFM

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
March 14, 1975

VERTIS HIGGINS

V.

NO. 6476
COURT OF APPEAL
FOURTH CIRCUIT
STATE OF LOUISIANA

VILLAGE OF JEAN LAFITTE, HONORABLE EDWIN W. EDWARDS, GOVERNOR OF THE STATE OF LOUISIANA, LEO E. KERNER, JR., QUINTEN S. COUEVAS, ALVRO DESPAUX, FREDERICK J. GROS, BRUNO TOUCHARD, HUEY L. BELSOME, IRVIN RAWLS, JR., CLARENCE DUFRENE AND THE PARISH OF JEFFERSON.

CONSOLIDATED WITH

FLEMING PLANTATIONS NO. 6477

V.

VILLAGE OF JEAN LAFITTE, HONORABLE EDWIN W. EDWARDS, GOVERNOR OF THE STATE OF LOUISIANA, LEO E. KERNER, JR., QUINTEN S. COUEVAS, ALFRO DESPAUX, FREDERICK J. GROS, BRUNO TOUCHARD, HUEY L. BELSOME, IRVIN RAWLS, JR., CLARENCE DUFRENE, AND THE PARISH OF JEFFERSON.

...
...

PER CURIAM

...

ON APPLICATION FOR REHEARING

(Court composed of Judges James C. Gulotta, John C. Boutall, and Peter H. Beer)

HARRY A. BURGLASS

FOR PLAINTIFF-APPELLANT

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JAN 14, 1975 *REHEARING DENIED*

Appellants' application for rehearing is a provocative pleading. We have given much consideration to the points raised in it. It correctly defines the basis upon which we reached our conclusion and levels a well-reasoned attack thereupon. Yet, we believe that the test of reasonableness which is specifically incorporated into the enabling statute and the conscientious application of that test by the district court were sufficient, in this case, to hold in favor of constitutionality.

In LSA-R.S. 33:52 (the enabling statute, Act 240 of 1964) the legislature has done more than simply recognize the right of the appellants to seek judicial determination of the fact that all technical requirements for incorporation have been met. It has delegated to the district court the right and duty to make the reasonableness inquiry before the incorporation can, in fact, take place. In effect, it has delegated its power to incorporate to 25 percent of the citizens of the unborn village *and* the district court with respect to its decision as to reasonableness of such incorporation after a full evidentiary hearing on that specific issue. Taken together, we believe that constitutionality exists.

We do not believe that the legislature is constitutionally compelled to frame an enabling statute so that the ultimate incident of incorporation is totally dependent on the affirmative vote of a majority of the affected villagers. Thus, a delegation to a stated percentage of the proposed villagers plus the reasonableness inquiry and ultimate determination thereof by the district court can be, and in this case is, sufficient to uphold the constitutionality of the statute.

The application for rehearing is denied.

REHEARING DENIED